82-2055

No.

Office-Supreme Court, U.S.
FILED
MAY 9 1983
ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

JACK BLANTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

# PETITION FOR A WRIT OF CERTIORARI FOR THE SUPREME COURT OF THE UNITED STATES

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## QUESTIONS PRESENTED

Whether or not the Petitioner was denied his right to a jury trial as provided in Article 3, Section 2 of the United States Constitution by the State Court of South Carolina finding him guilty of contempt of the said Court by attempting to influence or tamper with the Grand Jury of Horry County and sentencing him to four (4) months imprisonment and denying him a jury trial and trying him just before the Court sitting without a jury in spite of his motion for a jury trial.

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STATE OF SOUTH CAROLINA,

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF UNITED STATES

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Jack Blanton, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above-entitled case on January 4, 1983.

## OPINIONS BELOW

The opinion of the Court of General Sessions for Horry County, South Carolina is unreported and is printed in Appendix A hereto, infra, page 7. The Judgment of the Supreme Court of South Carolina is printed in Appendix A hereto, infra, page 12. The Journal Entry of Judgment of the Court of General Sessions for Horry County, South Carolina is printed in Appendix A hereto, infra, page 21.

## JURISDICTION

The judgment of the Supreme Court of South Carolina (Appendix A, infra, page 12) was entered on January 4, 1983. A timely petition for rehearing was denied on February 18, 1983 (Appendix A, infra, page 23). The jurisdiction of the Court is invoked under 28 USC §1257.

## QUESTIONS PRESENTED

Whether or not the Petitioner was denied his right to a jury trial as provided in Article 3, Section 2 of the United States Constitution by the State Court of South Carolina finding him guilty of contempt of the said Court by attempting to influence or tamper with the Grand Jury of Horry County and sentencing him to four (4) months imprisonment and denying him a jury trial and trying him just before the Court sitting without a jury in spite of his motion for a jury trial.

## STATUTE INVOLVED

Article 3, Section 2, Subsection 3 of United States Constitution as follows:

> "The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

## STATEMENT

The Petitioner, Jack Blanton, was served with an Order and Rule to Show Cause requiring him to appear before the Honorable Sidney T. Floyd, Presiding Judge of the Court of General Sessions for the Fifteenth Judicial Circuit, State of South Carolina, to show cause why he should not be held in Contempt of Court for attempting to influence the action or decision of the Horry County Grand Jury, which was to consider a case in which the Petitioner was a Defendant. The Petitioner, however, was to appear before the Grand Jury as a witness for the State in another case arising out of the same instance in which he was named as a Defendant. The Order and Rule to Show Cause was brought pursuant to Section 16-9-350 of the Code of Law of South Carolina, 1976, as amended, which makes it a crime to interfere with or tamper with a jury and/or common law powers of the Court to punish for contempt

and abandon its aforesaid statutory cause of action.

The Petitioner appeared before the Honorable Sidney T. Floyd, Presiding Judge, on April 22, 1982, and again on April 23, 1982. The Petitioner made a Motion that he be granted a trial by jury pertaining to the allegations made against him. This Motion was denied and the Appellant was thereafter tried before the Honorable Sidney T. Floyd without a jury. He was represented by H. E. McCaskill and Irby E. Walker, Jr., both members of the Horry County Bar. The Petitioner was found to be in Contempt of Court and was sentenced to confinement for a period of four (4) months. He appealed this decision and sentence to the Supreme Court of South Carolina who issued the opinion annexed to this Petition in Appendix A.

The Petitioner, Jack Blanton, at the time of the commencement of this proceeding was a magistrate and businessman in Horry County, South Carolina and because of his conviction for Contempt, has been suspended from office as a magistrate.

## REASONS FOR GRANTING THIS WRIT

The Petitioner was charged with the serious offence of jury tampering. Under the laws of the State of South Carolina, a Judge has unlimited discretion to punish for Contempt and could have sentenced the Petitioner to any sentence which the Court deemed appropriate. See Section 14-5-320 of the South Carolina Code of Laws for

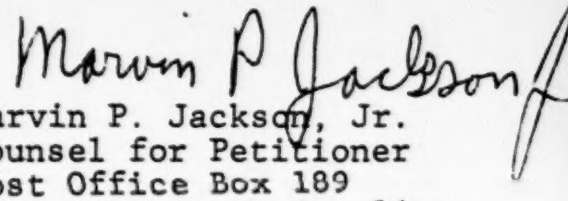
1976. Upon calling the case to trial, the prosecuror said he would proceed under common law contempt alone and with "the understanding that the sentence would not exceed six (6) months". This was obviously an attempt by the prosecutor to avoid the doctrine of this Court that is expressed in the case of Bloom vs Illinois, 391 U.S. 194, 20 L.Ed. 2d 522, 88 S.Ct. 1477. The Petitioner was obviously charged with a severe offense, has had imposed upon him a serious sentence which has had grave consequences for his life and his career.

The concepts of fundamental fairness as incorporated into due process require that he have a right to a jury trial in such a matter as provided by Article 3, Section 2 of the United States Constitution. For one to receive as much as six (6) months imprisonment under the Petitioner's particular facts and circumstances, is a serious enough criminal penalty to warrant a jury trial under Article 3, Section 2 of the United States Constitution.

## CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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May 26, 1983

little bit better than maybe foresight, or when you're looking out at something, but maybe he shouldn't have called, but certainly did nothing criminal. He certainly did nothing to hinder or obstruct justice. I think that was the furtherest thing from his mind, and that they just haven't proved that. They haven't proved the intent. It may be bad judgment, perhaps not. I can't be a judge on that, but he did nothing criminal.

COURT: Mr. McCaskill.

MR. McCASKILL: I think that covers it.

COURT: The Grand Jury, of course, must be unhampered by any possible influence, any attempt to possibly influence them in any way whatsoever, for their purpose, of course, is to protect the people, protect the prople against the State. As a matter of fact, that's one of the things that's built in for them. That's the very purpose, is to protect them from unwarranted prosecution and persecution by the State of South Carolina, and their actions and doings and administration must not be hampered in any way whatsoever.

Now, in this particular case, it gives me some concern because of the personalities involved in it. I, of course, have read things in the newspaper about things that might or might

not have happened at some political gathering, but that's not my concern at this particular hearing here. Whatever happened there, if anything happened at a political gathering, has nothing to do with this proceeding that we are having here today.

Now, as I perceive the facts to be, and I must decide from these facts whether or not I feel that Judge Blanton has -- or should be held in contempt of Court. And I use the word Judge, and I don't really mean to put a Magistrate in any different category than any other person would be, but as I perceive the facts to be, there was no question, as I understand it, that Mr. Jack Blanton, and his brother, Joe Blanton, had a preliminary hearing within a week, or close to a week, prior to the convening of the Grand Jury. There is no question that Mr. Jack Blanton, and I assume his brother both, knew that their case, by the particular Magistrate holding the preliminary hearing, had been sent to the Grand Jury. There is no question that Mr. Jack Blanton received a Subpoena to appear in his brother's case. There is no question as to whether or not he had any question in his mind as to whether it was proper for him to contact a member of the Grand Jury. There's no question that he did seek counsel of the oldest Magistrate, and I mean that in terms of service, not necessarily in terms of age, Judge Hooks, and there is no question that Judge Hooks did not counsel him to contact the Foreman of the Grand Jury. There is no question but that Mr. Jack Blanton did, in fact, call the Foreman of the Grand Jury, and

that he talked with the Foreman of the Grand Jury, and that the conversation took not less than two minutes nor more than fifteen minutes, whatever the time, and there is no question but that he asked if he could not bring his witnesses, and as I understand it, him saying his witnesses, or my witnesses, I believe was the phrase that he used.

Now, as I understand the law to be, so far as this case goes, that any willful attempt, of whatever nature, seeking to improperly influence the jurors in their impartial discharge of it's duties, whether by conversation or attempt to bribe, obstruct, intend to hinder the due administration of justice, would constitute contempt of Court, and I must decide whether or not this was a willful act on the part of Mr. Jack Blanton, whether the facts, as presented by the State, and by Mr. Blanton, would indicate, or would show, or tend to prove, that he attempted to hinder the due process, or due administration of justice, and then a step further, whether it was willful, and I find that it is a willfull attempt on your part to hinder the due administration of the operation of the Grand Jury, and I find that as a result of the Subpoena that you received, for one thing, and the Subpoena stated for you to appear. It did not state for you to investigate the case, or for your witnesses, whatever they might be, and whoever they might be, that you took it upon yourself to decide whether anyone else was subpoenaed or not subpoenaed. And then you went a step further and you wanted to, and did, contact the Foreman of the Grand Jury to

appear before them.

A person that's subpoenaed to appear before the Grand Jury is not to investigate charges that might be brought before the Grand Jury to make a determination. The Grand Jury is there to hear only one side, the State's side, and I further find, as a reason for finding that it was a willful act on your part, the fact that you did, in fact, contact another Magistrate and you did not follow what he might have -- or certainly he did not, as I understand what you said on the witness stand, that he did not tell you to contact, or suggest in any way, that you contact the Foreman of the Grand Jury, but even if he did, it would have been improper, and it would tend, in my judgment, to hinder the due administration of the proceedings of the Grand Jury.

I state this again; and I feel very strongly about it. The Grand Jury, in it's work, must remain above any person, no matter who, and no matter what, so Mr. Jack Blanton, I do find that you did willfully attempt to influence the Grand Jury, which would tend to hinder the due operation of justice, and I do find you in contempt of Court, and the sentence of the Court is that you are hereby confined to the South Carolina Board of Corrections for a period of four months.

MR. WALKER: If it please, Your Honor.

COURT: Yes sir.

MR. WALKER: We would move, at

this time, for an appeal bond on that.

COURT: All right sir, Fifteen Hundred Dollars.

MR. WALKER: All right, thank you.

COURT: All right, sir, very well. You'll give him the Notice of Appeal by this, I assume.

MR. WALKER: Yes sir.

------END OF REQUESTED TRANSCRIPT OF RECORD ----------

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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The State, . . . . . Respondent,

v.

Jack Blanton, Joseph Blanton, Myrtie Blanton, Richard Blanton, and Steward Blanton, Defendants, of whom Jack Blanton is . . Appellant.

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Appeal From Horry County
Sidney T. Floyd, Judge

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Opinion No. 21843
Filed January 4, 1983

AFFIRMED

H. E. McCaskill and Irby E. Walker, Jr., both of Conway, for appellant.

Staff Attorney Carlisle Roberts, Jr., of Office of the Attorney General, of Columbia, for respondent.

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LITTLEJOHN, A.J.: This proceeding, charging Appellant Jack Blanton with contempt of court, was commenced by the issuance of a Rule to Show Cause by the presiding judge of the Court of General Sessions of Horry County. It required

Blanton to show cause why he should not be held in contempt of court for attempting to influence the Horry County Grand Jury and more particularly its Foreman. After the taking of evidence, the judge found Blanton guilty and sentenced him to confinement for four months. Blanton appeals.

Blanton and his brother (Joe) were charged in warrants with assault and battery of a high and aggravated nature upon each other growing out of an altercation, which was later reduced by the Grand Jury to the common law offense of an affray. A preliminary hearing had been held and both were bound over for action by the Grand Jury. Blanton had employed two attorneys to represent him. On the day before the Grand Jury met, he was served with a subpoena to appear before the Grand Jury to testify against his brother, Joe. That evening, he phoned the Foreman of the Grand Jury, with whom he was not acquainted, ostensibly for the purpose of inquiring whether he should bring witnesses with him. Some of the facts incident to the telephone call are not in dispute. Other facts have been determined by the presiding judge adversely to Blanton, resulting in his conviction and sentence.

According to the testimony of the Foreman of the Grand Jury, Blanton first inquired as to whether he should bring his witnesses with him to the Grand Jury room. If this were the extent of the telephone call, Blanton might be held blameless. The Foreman testified, however, that the conversation lasted some ten to fifteen minutes. It was Blanton's

testimony that the conversation lasted perhaps two minutes and that of his wife that the conversation lasted some five or six minutes.

The next day the Grand Jury met and returned a True Bill as to both of the Blantons, reducing the charge from that of assault and battery of a high and aggravated nature to that of an affray. Later, the Foreman reported the telephone call to the Solicitor; the Judge issued the Rule to Show Cause resulting in the hearing.

Blanton submits that the trial judge erred in refusing a jury trial.

In the Order and Rule to Show Cause, Appellant was alleged to be "in violation of Section 16-9-350, Code of Laws of South Carolina, 1976 as amended and/or in contempt of the Court of General Sessions of Horry County." At the beginning of the trial, the State elected to proceed under the inherent contempt power of the Court of General Sessions, electing not to proceed under the circuit courts of this established that there is no right to a jury trial, when the circuit courts of this state proceed under its common law contempt powers.

In State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955), which involved a contempt proceeding, tried by the judge without a jury, this Court said:

> There can be no doubt about the power of the courts of general jurisdiction in this

> State to punish for contempt. This power is not derived from any statute but from the common law which from its inception recognized this implied and necessary power, without which contumacious conduct could well destroy the authority of any Court.

The court is not dependent upon the jury to protect its integrity under the facts enumerated hereinabove. We find no error in the lower court's refusal to order a jury trial.

Next, Appellant asserts that the trial judge erred in allowing into evidence a copy of the subpoena received by Appellant, which pertained to his scheduled appearance before the Grand Jury. Appellant argues that the State should have been required to issue a notice to produce the subpoena. Instead, the State introduced a copy of the subpoena. There has been no showing made by Appellant that he was prejudiced by this action of the trial court. We find no error.

Finally, Blanton argues that the lower court's finding that his attempt to influence the Foreman is erroneous. It is his contention that he was merely requesting information as to whether he could bring additional witnesses to testify before the Grand Jury and was not attempting to improperly influence anyone. We have reviewed the entire record which the presiding judge had before him. This record reveals ample evidence to warrant a finding of contempt. Our determination, as was the determination

of the trial judge, is based on the whole of the showing. We print a portion of testimony of the Foreman:

> Q. All right, sir and if you would, relate to the Judge what conversation you had with the man that identified himself to you as Jack Blanton.
>
> A. Approximately seven-thirty this night, Wednesday night, a man called, identifying himself as Jack Blanton--which I didn't know Mr. Blanton--called and asked if I was serving on the Grand Jury, and I stated to him that I was. He made the statement that he didn't know where it was proper or not for him to contact me or not, but he had been advised to.
>
> . . .

COURT. Yes sir. You go right on.

> A. We talked in generalities of some things, and he made the comment that--he or I made the comment that he didn't know me or I didn't know him, but his wife knew my wife from prior employment. I believe, after this--we talked of this, that he made the statement that he and his brother didn't seem to could get together and settle the issue, . . . and he went on, at this point, to ask me if we would please hear his witnesses, which he stated he had several.

. . .

Q. All right, sir, did he indicate to you that he knew the Grand Jury was meeting the next day?

A. He did, sir.

Q. All right, did he inquire of you if you were the Foreman of the Grand Jury?

A. The word Foreman, to my knowledge, wasn't mentioned. He asked if I was a member of the Grand Jury, or if I was on the Grand Jury.

Q. And what did you reply to him?

A. That I was.

. . .

Q. All right now, what, if any, statements did Mr. Blanton make to you about who he was and where he lived, and his status in the community?

A. He did not refer to where he lived, but he referred that he had tried to be a good citizen, and he had made some statement to some of the deeds that he made into the--some of the good things he had done, or tried to do, into the community.

. . .

Q. Could you tell us how many times he referred to his standing in his community and his striving ---

A. It came up more than one time.

Q. More than one time?

A. Yes sir.

. . .

Q. The net effect of what he had to say to you was, hear all the witnesses?

A. I believe his statement was, would you listen--would you please listen to my witnesses.

Appellant Blanton was a Magistrate in Horry County. He was more cognizant of the impropriety of approaching a juror than would be the ordinary citizen. He testified that he had "...been to Criminal Justice courses enough that I know you do not try to tamper with a jury, influence a jury any way, fashion or form." He testified in the record:

Q. Well, in your Magistrate Handbook, doesn't it contain the statute, or denotes to the effect that it is improper to try to influence a member of a Grand Jury or juror?

A. Yes sir, it is.

Q. No doubt about that, is

there?

A. On influence, no doubt at all.

The record reveals a subtle and indirect atttempt to influence the Foreman. Blanton testified that he phoned a Magistrate friend and attempted to phone the Solicitor to get the information he ostensibly sought but was unable to reach them. He did not phone his two attorneys which would have been the logical thing for him to do. Obviously, they would have advised him not to pursue the Foreman of the Grand Jury.

Mr. Blanton had some familiarity with the workings of the Grand Jury system. The lower court properly found that his actions constituted a willful attempt to improperly influence the Foreman of the Grand Jury in discharging his duties.

This Court, as well as the lower court, view any attempt to influence the decision-making process of the Grand Jury as a grave and serious matter. The trial judge stated this succinctly during the hearing in the following manner:

> The Grand Jury, of course, must be unhampered by any possible influence, any attempt to possibly influence them in any way whatsoever, for their purpose, of couse, is to protect the people, protect the people against

the State. As a matter of fact, that's one of the things that's built in for them. That's the very purpose, is to protect them from unwarranted prosecution and persecution by the State of South Carolina, and their actions and doings and administration must not be hampered in any way whatsoever.

Accordingly, the Order of the Circuit Court is hereby

AFFIRMED.

LEWIS, C.J., NESS, GREGORY and HARWELL, JJ., concur.

# Sessions Docket

Walker, Evans & Cogswell, Co., Chas. S. C. 32358

| No. of Cause | No. of Term | THE STATE vs. | CAUSE OF ACTION | PLAINTIFF'S ATTORNEY |
|---|---|---|---|---|
| 8 | 82-GS-26-467 | Frank Baldwin Hyde | DUS | Sol |
| 8 | 82-GS-26-468 | Frank Baldwin Hyde | Failure to stop when light + siren | Sol |
| 8 | | End of cases which went to Grand Jury on 4-16-82 | | |
| 8 | 2-GS-26-469 | Jack Stanton | Contempt of Court | |

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continued from page 21

82-BS-26-470, Larry Dene Singleton — DUI - 2 vio

82-BS-26-411 Alin Hucks — DUS

82-BS-26-472 Pulard Haner — Larceny

TRUE COPY, ATTEST
Billie B. [illegible]
CLERK OF COURT, HOS[illegible]
COUNTY, S. C.
BY [illegible] Clerk

THE SUPREME COURT OF SOUTH CAROLINA

Frances H. Smith
Clerk

P. O. Box 11330
Columbia, SC
29211

February 18, 1983

H. Wayne Floyd, Esquire
P. O. Box 52
West Columbia, SC 29171-0052

Re: The State v. Jack Blanton

Dear Mr. Floyd:

The Court has this day refused your Petition for Rehearing in the above case in the following order:

"Petition Denied.

s/ J. Woodrow Lewis C.J.
s/ Bruce Littlejohn A.J.
s/ J. B. Ness A.J.
s/ David W. Harwell A.J.
s/ George T. Gregory, Jr. A.J.

February 18, 1983."

The remittitur is being sent down today.

Sincerely yours,

s/ Frances H. Smith
CLERK

FHS/cm
cc: Carlisle Roberts, Jr., Esquire